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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,862	01/25/2007	Ottmar Gehring	095309.57760US	3922

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EXAMINER	
KIM, EDWARD J	
ART UNIT	PAPER NUMBER
2455	

MAIL DATE	DELIVERY MODE
03/11/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/581,862	GEHRING ET AL.	
	Examiner	Art Unit	
	EDWARD J. KIM	2455	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 February 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: *none*.
   Claim(s) objected to: *none*.
   Claim(s) rejected: *1-6, 8-10*.
   Claim(s) withdrawn from consideration: *claim 7*.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/saleh najjar/
Supervisory Patent Examiner, Art Unit 2455

Continuation of 11. does NOT place the application in condition for allowance because:

The Applicant traverses the 35 USC 112 second paragrpah rejection regarding claims 8 and 10. Furthermore, the Applicant argues, "the terms "primary", "secondary", and "tasks" are common words in the English languages, and one skilled in the art without even referring to the specification would understand what is ment by..." (refer to pg.2 of the reply filed on 02/17/1009).

The Examiner respectfully disagrees.

The terms "primary tasks" and "secondary tasks" are normally used to define the importance/priority of tasks in the field of art. For example, "primary tasks" would refer to tasks that have a higher priority or importance than "secondary tasks". However, the claim language reads, "software modules perform primary tasks", "a software module with a secondary task can be additionally stored in a microcontroller's memory by the controllers". Since there is no clear disclosure of what is considered as "primary tasks" or "secondary tasks" in the specification provided by the Applicant, nor has the Applicant provided specific parts of the disclosure that further define the terms, the claim is vague and indefinite ot what the claimed subject matter is exactly. It is unclear to what is considered a primary task or a secondary task, nor the purpose of the terms distinguishing primary task and secondary task. The Applicant has failed to provide support of the limitations disclosed in the claim language, and merely states that the words "primary" and "secondary" is known in the art. The claims stand unclear and indefinite to what the claimed subject matter is exactly and remains rejected under 35 USC 112 second paragraph. The Examiner gives the broadest reasonable interpretation of the claim language for examination purposes.

The Applicant argues that the combination of Kayano and Chavez fails to disclose or suggest both:

"1. information indicating the software module's operating status and the identity of the controller on which the software module is running; 2. information sent by the controllers...[that] is indicative of their available computational capacity." (refer to pg.3 of the reply filed on 02/17/2009)

The Examiner respectfully disagrees.

The Applicant refers to the previous Reply (filed on 06/30/2008) for support and provides additional support in the Reply filed on 02/17/2009. Kayano discloses a system and method that adjusts the processing amount of each control unit by adding or removing some tasks to or from control units in accordance with the processing amount of each control unit whose control load changes corresponding to running states of an automobile. This allows load-balancing amongst the vairous control units in the system (Kayano, col.1 ln.44-63). Kayano further discloses tha the load states of the control units are detected from the present running states and the load staes of each of the control units, wherein a load detecting means is provided. In accordance to the load states, the programs are shuffled around from a control unit with a higher load states to a control unit which has a lower load state. Via the present running states and the load states of the control units, the operating status of the program that is running on a control unit, the identity of the control unit the program is running on, and the available capacity of the control unit is detected for load-balancing as disclosed by Kayano (Kayano, col.2 ln.65 - col.3 ln.12, col.3 ln.40-47, col.6 ln.40-47). Control unit with higher load states has lower computational capacity than a control unit that has a lower load state. Chavez further discloses a system that selects a processor with the greatest free computational capacity to execute a software module (Chavez, col3 ln.4-15) - also refer to pg.4 of the Office Action (Final Rejection) dated 11/17/2008. Therefore the prior arts presented by the Examiner discloses all features claimed by the Applicant.

The Applicant argues that Kayano and Chavez fails to disclose or suggest "the process cycle for the controllers is determined by the software modules for one of the primary takss, the operating system and a bus protocol." (refer to pg.6 of the reply filed 02/17/2009). Furthermore, the Applicant continues, "Thus, the process cycle of Applicants' claim 8 is determined based on the following three elements: 1. the software modules for one of the primary tasks; 2. the operating system; and 3. a bus protocol. As previously discussed, Kayano at most discloses the use of an interrupt that is based upon braking, brake off delay, or a 10 ms interval, but does not disclose or suggest using the three elements set forth in claim 8 in order to determine the process cycle of the conrollers....rejection of claim 8 does not account for all of the elements in claim 8..." (refer to pg.6 of the reply filed on 02/17/2009).

The Examiner respectfully disagrees.

First, the assertion that "the process cycle of Applicants' claim 8 is determined based on the following three elements..." and "...but does not disclose or suggest using the three elements set forth in claim 9 in order to determine the process cycle of the controllers" are in error. The claim language reads, "the process cycle for the controllers is determined by the software modules for one of the primary takss, the operating system and a bus protocol". The process cycle is determined "for" the three claimed elements, not "by" the three elements claimed. If the case of the Applicant's explanation was the true intention of the claim language, then claim 8 is subject to 35 USC 112 second paragraph rejection as being vague and indefinite to what the claimed subject matter is. The Examiner respectfully requests that the Applicant make changes accordingly to clearly point out and distinctly claim the invention.

Second, the claim langauge does not call for all of the three elements, but claims "one of" the three elements disclosed. The process cycle is used for 1. primary tasks 2.operating system 3. bus protocol. Hence the process cycle is used for primary tasks, the operating, or the bus protocol. As admitted, Kayano discloses the use of interrupt that is based upon braking, brake off delay, or a 10ms interval (refer to pg.6 of the Reply file don 02/17/2009). Therefore, Kayano discloses at least a process cycle such as a set interval to output, check, and determine the status of each controller. Furthermore, the Applicant also admits that Kayano teaches that the system constantly and regularly acknowledge the load states and the utilization levels (refer to pg.7 of the reply filed on 02/17/2009).

There seems to be multiple interpretations of the claim language regarding this claim. Appropriate correction is strongly suggested in order to particularly point out and distinctly claim the true invention of the Applicant.